



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

MA 23 /MB-IV/2019

In

CP (IB) No.197/MB/2018

Under Section 30 (6) of IBC, 2016

Mr. Amit Gupta

Resolution Professional of

Unimark Remedies Limited

.... Applicant/Resolution Professional

In the matter of:

ICICI Bank Limited

...Financial Creditor

V/s

Unimark Remedies Limited

...Corporate Debtor

Order Dated: 17.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant (RP)

:

Ms. Pooja Mahajan a/w
Ms. Mahima Singh,
Mr. Jineshkumar Gandhi,



Ms. Arveena Sharma i/b
Arihant Associates,
Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being MA No. 23/MB-IV/2019 filed by Mr. Amit Gupta, the Applicant (“Resolution Professional” or “RP”), under Section 30 (6) and Section 31 of Insolvency and Bankruptcy Code, 2016 (the Code), for approval of the Resolution Plan (“Plan”) submitted by Consortium of ARCIL, Intas Pharmaceuticals Ltd & Shamrock Pharmachemi (P) Ltd (Collectively referred as “Successful Resolution Applicant” or “SRA” or “Resolution Applicant Consortium”) for the Corporate Debtor Unimark Remedies Limited (hereinafter called as the “Corporate Debtor”) and approved by 72.25% Vote of Committee of Creditors (“CoC”).
2. The brief submissions on behalf of the Resolution Professional is as under:
 - 2.1. Vide order dated 3rd April, 2018, the Adjudicating Authority (“AA”) admitted the Company Petition No. 197 of 2018 against the Corporate Debtor and appointed the Applicant as the Interim Resolution Professional in this case. Subsequently, the Applicant was confirmed as the RP by the CoC in its meeting held on 3rd May, 2018.



- 2.2. A Public Announcement inviting claims from creditors in Form A of Schedule II as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) was made by the Applicant on 9th April, 2018 in Mumbai Edition of “Free Press Journal” and “Navshakti”, where the Registered Office of the Corporate Debtor is situated and on 10th April, 2018 in Ahmedabad Edition of Business Edition and Gujarat Today, where the manufacturing unit of the Corporate Debtor is situated.
- 2.3. Pursuant to the Public Announcement, the Applicant collated the claims from the Creditors of the Corporate Debtor; constituted the CoC; and filed the list of Creditors and a Report certifying the constitution of CoC with the Adjudicating Authority pursuant to section 21 of the Code on 23rd April, 2018.
- 2.4. The Applicant convened the first meeting of CoC on 3rd May, 2018 and in the said meeting, the Applicant was confirmed as the Resolution Professional of the Corporate Debtor by 96.70% vote of CoC.
- 2.5. The RP, after approval of CoC, appointed two Registered Valuers namely M/s. Adroit Technical Services Pvt. Ltd. and Co. and M/s. Delta Valuers and Appraisers LLP as per Regulation 27 of the CIRP Regulations to determine Fair value and Liquidation value of the assets of the Corporate Debtor;



and M/s. Price Water House Coopers Private Limited (“PWC”) to act as the Process Advisor to the CoC.

- 2.6. In the Third meeting of the CoC held on 4th June, 2018, the members unanimously approved the eligibility criteria for inviting Expression of Interest (“EOI”) from Prospective Resolution Applicants (“PRA”) as per Section 25(2)(h) of the Code; published a Public Announcement on 8th June, 2018 in English Edition of Financial Express and Business Standard (Mumbai Delhi, Chennai, Kochi, Chandigarh, Ahmedabad, Pune, Lucknow, Kolkata, Bhubaneswar, Bangalore and Hyderabad) inviting EOI from PRAs; and hosted the same on the website of the Corporate Debtor. The last date for submission of EOI was 29th June, 2018.
- 2.7. In the fourth meeting of the CoC held on 27th June, 2018, the members approved the extension of last date for submission of EOI by PRAs from 29th June, 2018 to 16th July, 2018 and appointed M/s. T R Chadha & Co., as the Transaction Auditor to conduct the Transaction Audit of the Corporate Debtor by 89.46% Vote.
- 2.8. In the Fifth meeting of the CoC held on 9th July, 2018, the CoC approved the Evaluation Matrix for evaluation of the Resolution Plan submitted by the PRAs pursuant to the Section 36A (2) of the CIRP Regulation by 86.02% vote and unanimously approved Request for Resolution Plan (“RFRP”) document.



- 2.9. The approved RFRP inviting Resolution Plan from PRAs was published on the website of the Corporate Debtor on 16th July, 2018 with last date for submission of Resolution Plan as 14th August, 2018 and Evaluation Matrix was uploaded on the website of the Corporate Debtor on 17th July, 2018.
- 2.10. In the Sixth meeting of CoC held on 13th August, 2018, the members approved the extension of the last date for submission of EOI from 31st July, 2018 to 7th September, 2018 and also approved the last date for submission of the Resolution Plan from 14th August, 2018 to 14th September, 2018 by 96.52% Votes.
- 2.11. In the Sixth meeting, the CoC also approved the extension of the CIRP period by a further period of 90 days as per section 12 (2) of the Code with a 96.52% Vote and an application for extension of CIRP by a further period of 90 days under Section 12(2) of the Code was filed by the Applicant, which was allowed vide an order dated 10th September, 2018 by this Bench extending CIRP period by a further period of 90 days from 1st October, 2018 to 29th December, 2018.
- 2.12. In the Seventh meeting of the CoC held on 12th September, 2018, the CoC members approved the extension for the submission of the Resolution Plan from 14th September, 2018 to 15th October, 2018 by 97.52% votes. In the said meeting, it was informed to the CoC members that one of the Valuers “Adroit Technical Services Pvt. Ltd” had mistakenly sent the draft valuation report to the employees of the Corporate



Debtor. Considering the said mistake, a legal advice was sought from the legal counsel; the services of “Adroit Technical Services Pvt. Ltd” were terminated with immediate effect; and Rakesh Narula and Co. was appointed on 30th September 2018 to determine the Fair Value and Liquidation Value of the Corporate Debtor the as per provisions of Code. Further, an undertaking was taken from both the employees of the Corporate Debtor to protect the confidentiality of the contents of the report.

2.13. During the Tenth Meeting of the CoC held on 1st November 2018, the RP received the Resolution Plan from the following PRAs:

- ARCIL, Intas Pharmaceuticals and Shamrock Pharmachemi (P) Limited as consortium
- Gorwara Chemical Industries
- Periwinklestar Advisors Private Limited

2.14. The aforementioned plans were opened by the CoC for discussion. Subsequent to opening of the Resolution Plan, it was informed by the Process Advisor to the CoC and the RP that:

- i. The Resolution Plan submitted by Periwinklestar Advisors Private Limited (representing Mr. Ricky Nathaniel) was inconsistent with the provisions of the RFRP and has been communicated to comply with the



provisions of the RFRP. However, M/s. Periwinklestar Advisors Private Limited did not submit the revised Resolution Plan complying with the provisions of the RFRP.

- ii. The sealed envelope submitted by Gorwara Chemical Industries Limited was superscripted by “Resolution Plan for Unimark Remedies Limited”. However, upon opening of Resolution Plan in the said meeting, it was noticed that it was not a Resolution Plan but a claim from operational creditor in Form B.
- iii. The Resolution Plan submitted by ARCIL, Intas Pharmaceuticals and Shamrock Pharmachemi (P) Limited as consortium was discussed with the CoC for prospective timelines for evaluation of the Resolution Plan, negotiation with the Resolution Applicant, and scoring of Resolution Plan.
- iv. At this juncture, ARCIL, Intas Pharmaceuticals and Shamrock Pharmachemi (P) Limited, as consortium, was the only Resolution Applicant whose Plan was evaluated on the basis of the approved Evaluation Matrix by the CoC in its eleventh meeting held on 14th November, 2018. The Resolution plan submitted by Periwinklestar Advisors Private Limited was not evaluated as they failed to deposit the Earnest Money Deposit (“EMD”) and the Resolution Plan was not in compliance with the requirements of RFRP.



- 2.15. In furtherance to the evaluation of the Resolution Plan submitted by Resolution Applicant Consortium, the said plan was discussed by the CoC in the its Twelfth meeting held on 4th December 2018, and it was CoC suggested that they should submit a revised Commercial Offer as per discussions and negotiations.
- 2.16. During the Thirteenth CoC, the Resolution Applicant Consortium submitted a negotiated commercial offer and the same were discussed further by the CoC and the Applicant. The CoC asked the Resolution Applicant Consortium to further revise their offer and submit the final Resolution plan before the next meeting of the CoC.
- 2.17. Pursuant thereto, the Applicant filed a Miscellaneous Application 1569 of 2018 on 20th December 2018 seeking directions from this Tribunal to exclude the period of litigation from the CIRP period, as the CIRP period was expiring on 29th December 2018 and there was not enough time to consider the viability, feasibility of the Resolution Plan by the CoC members; and for evaluation of conformity with the requirements of the RFRP. The said Misc. Application was allowed by AA vide order dated 21st December 2018 excluding a period of 5 days from the CIRP period. Consequently, the period of CIRP was to end on 3rd January 2019.
- 2.18. During the Fourteenth Meeting of the CoC held on 24th December 2018, the Resolution Applicant Consortium submitted a revised resolution plan on 24th December 2018,



during which the queries and reservations of CoC members were addressed on the revised resolution plan.

2.19. During the Fourteenth CoC meeting, the Resolution Plan submitted by Periwinklestar Advisors Private Limited was rejected, the Applicant informed the CoC that the Periwinklestar Advisors Private Limited has not deposited the EMD and had requested for additional time from the CoC, which was denied by the CoC, hence, the Resolution Plan submitted by the Periwinklestar Advisors Private Limited stood rejected.

2.20. In the Thirteenth meeting of the CoC held on 12th December 2018, the Applicant placed an envelope received by him on 11th December 2018 containing Resolution Plan submitted by Omkara Asset Reconstruction Private Limited (“Omkara ARC”) and Raj Chem jointly which was after the Cut-off date for submission of Resolution Plan i.e. 31st October 2018. The Applicant placed the sealed envelope before the CoC seeking their Consent to open and consider Resolution Plan. The CoC, after taking legal opinion, unanimously rejected the Resolution Plan received after the Cut-off date i.e. 31st October 2018 and instructed the Resolution Professional to return it without opening the envelope. Pursuant thereto, Omkara ARC filed a Miscellaneous Application No. 1529 of 2018 on 17th December 2018 before AA, seeking directions to the CoC to consider its Resolution Plan submitted before the Applicant on 11th December 2018. The AA directed the CoC to consider its Resolution Plan. Further, in the said fourteenth CoC Meeting,



the Resolution Plan submitted by Omkara ARC and Raj Chem as a consortium was opened and discussed pursuant to direction of the AA. The Applicant along with process advisors and CoC evaluated the Plan submitted by Omkara ARC and Raj Chem as a consortium. The CoC had discussion with the representatives of Omkara ARC and Raj Chem. The CoC suggested that there needs to be clear sighting of the sources of funds towards upfront as well as for back ended payment and the representative of the said consortium was requested to provide a complete plan in compliance with the requirements of RFRP for further evaluation of the Feasibility and Viability of the Resolution plan. The representatives of Omkara ARC and Raj Chem sought time to come back with a revised offer by 6:00pm on 24th December 2018. The Fourteenth Meeting of the CoC was continued on 26th December 2018 where the Evaluation of Resolution Plan submitted by Omkara ARC and Raj Chem as a consortium was discussed at length, further the members of the CoC stated that they had given an opportunity to Omkara ARC and Raj Chem as a consortium to submit a complete and revised plan, and the plan couldn't be assessed on its viability and feasibility due to the following reasons: -

- a) Resolution plan submitted by the Resolution Applicant is not complete; is not in compliance with the RFRP; and does not contain financials projections, hence, feasibility and viability of the its Resolution Plan for the Corporate Debtor couldn't be established.



- b) Source and visibility of funds towards the upfront cash flow vis-à-vis for the back ended payment is also not forming part of the plan and not provided in the extended timelines.
- c) The Resolution Applicant has no Pharma sector experience which is considered vital for assessing whether the Resolution Applicant would be able to carry on the business of the Company if the Resolution plan is approved by the CoC and the AA.
- d) Even though additional time was provided to the Resolution Applicant by the CoC members to submit a complete plan the same was not adhered to by the Resolution Applicant.
- e) Further, the Resolution Plan was not complete with respect to RFRP, failing which the Applicant was not in the position to put the Resolution plan for voting.

2.21. Further, after the Fourteenth Meeting of the CoC, the Resolution Applicant Consortium further revised their commercial offer by way of an Addendum to the Resolution Plan and the same was submitted to the Applicant on 27th December 2018. Thereafter, the Resolution Plan submitted by Resolution Applicant Consortium was put for e-voting of the CoC, as per Regulation 26 of the CIRP Regulation 2016, and the E-voting window was kept open from 28th December 2018 to 1st January 2019. The said resolution plan was thereafter approved by 72.25% Vote.



3. Summary of Resolution Plan

Summary of Net Present Value (“NPV”) and % recovery by financial creditors

Total amount that will be recovered by the Financial Creditor will be INR **1,21,00,00,000/-** (Rupees one hundred and twenty-one crore only) which is as follow:

Upfront Cash: INR. **1,01,00,00,000/-** (Rupees one hundred and one crore only)

NCD's: INR. **20 Crores** (Rupees twenty crores only)

a. Highlights of Resolution Plan

I. Corporate Insolvency Resolution Process Cost

The Resolution Plan provides for payment of CIRP Cost as per para 3.2 of Resolution Plan in priority over other payments. The outstanding CIRP cost has been estimated by the Resolution Applicant as INR 13,00,00,000/- (Rupees thirteen crore only). In the event, the outstanding CIRP cost is less that INR 13,00,00,000/- the excess amount shall be added to Financial Creditors Cash Payment. And in the event the outstanding CIRP cost is more that INR 13,00,00,000/- the excess amount shall be reduced to the extent such excess amount from Financial Creditors Cash Payment.

II. Financial Creditors



As per the Resolution Plan INR 1,21,00,00,000/- (Rupees one hundred and twenty-one crore only) to the Financial Creditors is proposed to be paid as follows:

Upfront Payment	INR. 1,01,00,00,000/- (Rupees one hundred and one crore only)
Non-Convertible Debentures	INR. 20,00,00,000/- (Rupees twenty crores only)

III. Workmen/Employee's Dues

Out of the total Dues Admitted total dues of INR. 5,00,00,000/- (Rupees five crores only) will be paid towards the workmen/ employee's dues in the following manner:

- i. First, towards full discharge of the wages/dues of the workmen of the Corporate Debtor for the period of 24 months preceding the ICD, if any;
- ii. Second, towards full/proportionate discharge of the liability of the Corporate Debtor for gratuity and leave encashment accrued till the Transfer Date of the employees which have resigned from/discontinued with the Corporate Debtor;
- iii. Third, towards full/proportionate discharge of the liability of the Corporate Debtor for the outstanding amounts of the wages and salaries of (a) the continuing workmen, if any; and (b) continuing employees of the Corporate Debtor



(which have not resigned from/discontinued their employment with the Corporate Debtor) where each of the total dues of such employees are up to Rs. INR. 10,00,000/- (Rupees ten lakh only). In the event, if any of the continuing employees of the Corporate Debtor have total dues of more than INR. 10,00,000/- (Rupees ten lakh only) each, such employees shall not be paid anything and all liabilities of the Corporate Debtor towards such employees' claims shall stand waived and extinguished.

iv. As per the Resolution Plan in the event, the amount payable to workmen and employee, as contemplated above, is lower than Rs.5,00,00,000/- (Rupees five crores only), the excess amount out of this allocated amount shall be added to the Financial Creditors Cash Payment under this Resolution Plan.

IV. Out of the total Dues Admitted total dues of INR. 1,00,00,000/- (Rupees One crores only) will be paid towards Remaining Operational Creditors (other than the Workmen and Employees Dues as above) being towards the Statutory Dues of the *Corporate Debtor and Other Creditors (excluding Related Party Creditors)*.

V. The Equity Share holders are proposed to be paid Nil amount.



4. The Applicant submits that at the time of filing the Application, the Applicant has admitted total claim of INR 1172.26 Crore (Rupees eleven hundred seventy-two crore twenty-six lakhs only) filed by the creditors under the provisions of the Code and its applicable regulations, which is tabulated as below:

Creditors	Amount Claimed (INR in Crore)	Amount Admitted (INR in Crore)
Financial Creditors	1110.21	1072.65
Operational Creditors	61.53	50.16
Workmen/Employees	11.05	11.05
Statutory Liabilities	122.39	38.40
Total	1305.18	1172.26

- 4.1. The Applicants submits that the appointed Registered Valuers have determined the fair value and liquidation value as per Regulation 35 of the CIRP Regulations. The average of the value determined by the Registered Valuers is as stated below:

Registered Valuers	Fair Value (INR in Crores)	Liquidation Value (INR in Crores)
M/s. Rakesh Narula & Co.	1,75.87	1,29.00
M/s. Delta Valuers and Appraisers LLP	180.59	119.05
Average of the Valuers	178.23	124.02



(Final Report from Delta Valuers were not received on the valuation of Inventory till the time of declaring the Liquidation Value to CoC members. Hence the Value of the Stocks has been considered on lines of Rakesh Narula & Co. Further final report as received from Delta Valuers and Appraisers LLP has ambiguity on the inventory value net off the Stock held under Bailment Contract.)*

4.2. In light of the above and pursuant to the provisions of the CIRP Regulations, the Applicant hereby certifies that:

- a. the said Resolution Plan complies with all the provisions of the Code and CIRP Regulations and does not contravene any of the provisions of the law for the time being in force.
- b. the Resolution Applicant (“Consortium of Intas Pharmaceuticals Ltd, ARCIL and Shamrock Pharmachemi(P) Limited”) has submitted an affidavit dated 30th October, 2018 by Intas Pharmaceuticals Ltd and 31st October, 2018 by ARCIL & Shamrock Pharmachemi Pvt Ltd respectively confirming eligibility under section 29A of the Code to submit the Resolution Plan and the contents of the said affidavit are in order;
- c. the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder with 72.25% Vote after considering its feasibility and viability and other requirements specified by the CIRP Regulations;



- d. The Applicant has sought vote of the members of the CoC by electronic voting system which was kept open at least for 24 hours as per Regulation 26 of the CIRP Regulations;
- e. The Resolution Plan provides priority in payment to the operational creditors over financial creditors as per Regulation 38 (1) of the CIRP Regulations.
- f. The Resolution Plan includes a statement under regulation 38 (1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

4.3. The Applicant further submits that the Resolution Plan demonstrates the following:

- a. it addresses the cause of default,
- b. it is feasible and viable,
- c. it has provisions for its effective implementation,
- d. it has provisions for approvals required and the timeline for the same, and
- e. the Resolution Applicant has the capability to implement the resolution;



4.4. The Applicant also submits that pursuant to Regulation 39 (2) of CIRP Regulations, he has determined the transactions, which are preferential, undervalued, extortionate or fraudulent in nature as per the provisions of the Code and duly shared a Transaction Review Report along with the Transaction Audit Report with all the members of the CoC and an application No. MA 269/2019 is pending before Adjudicating Authority for appropriate order(s) in relation thereto.

4.5. The Applicant also submits that the Applicant has issued a Letter of Intent on behalf of CoC to the Resolution Applicant Consortium dated 1st January 2019. The Applicant has also received Bank Guarantees of Rs.10,00,00,000/- Crores from the Resolution Applicant Consortium.

4.6. The Applicant submits that the Resolution Plan is subject to the contingencies that the concessions, waivers and exemption sought under the Resolution Plan are an integral part of the Resolution Plan and crucial to ensure the successful implementation of the Resolution Plan, which reads as follows –

4.6.1. It is stated under PART II (“THE MAIN CONTENTS OF THE RESOLUTION PLAN”) that the implementation of the Resolution Plan is subject to the requisite approval/s of the CoC of the Corporate Debtor and thereafter, by the Hon’ble Adjudicating Authority.

4.6.2. As per Para 6.3.2 of the Resolution Plan, the effectiveness and implementation of the Resolution Plan by the Resolution Applicant shall be: (a) subject to and conditional on the



fulfilment of the actions set out in paragraph 7 ('ACTIONS ON OR BEFORE THE TRANSFER DATE'); and (b) subject to and conditional on the approval by the Hon'ble Adjudicating Authority of the 'EFFECT OF THE RESOLUTION PLAN' as set out in paragraph 9 of the Resolution Plan.

4.7. The Applicant submits that this Application for the approval of the Resolution Plan is being filed before the expiry of the period of CIRP provided in Section 12 of the Code. The CIRP period pursuant to the Order dated 21st December 2018 passed by AA ends on 3rd January 2019.

4.8. Hence, the Applicant prays for appropriate order:

- a. To approve the Resolution Plan of Resolution Applicant Consortium (Intas Pharmaceuticals Ltd, ARCIL and Shamrock Pharmachemi (P) Limited") as agreed upon by the requisite majority of CoC by 72.25% votes as per the provisions of the Code;
 - b. Any other order that the Hon'ble NCLT may find fit in the facts and circumstances of the present case.
5. The Applicant has filed the Compliance Certificate in Form - H under Regulation 39(4) of the Regulations showing the compliances of the Plan, as mandatorily required under the Code and Regulations and declared hereunder:



- 5.1. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) and does not contravene any of the provisions of the law for the time being in force;
- 5.2. The interest of existing shareholders has been altered by proposing to right of 100 % existing Capital of the Corporate Debtor.
- 5.3. The Applicant has further declared that-
- a. the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD.;
 - b. The Resolution Plan-
 - provides for the payment of insolvency resolution process costs,
 - provides for the payment to the operational creditors,
 - does not provides for the payment to the financial creditors who did not vote in favour of the resolution plan, as it was approved prior to the amendment which came into force 06.08.2019,
 - provides for the management of the affairs of the Corporate Debtor,
 - provides for the implementation and supervision of the resolution plan, and
 - Contravenes any of the provisions of the law for the time being in force;



- c. The Resolution Plan-
- is feasible and viable according to the CoC, and
 - has been approved by the CoC with 66% voting share;
- d. The Resolution plan has provisions for its effective implementation plan, according to the CoC;
- e. The amount due to the operational creditors under the resolution plan has been given priority over financial creditors in payment;
- f. The Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders;
- g. The Resolution Plan provides-
- the term of the plan and its implementation schedule;
 - the management and control of the business of the Corporate Debtor during its term;
 - Adequate means for supervising its implementation.
- h. The Resolution Plan demonstrates that-
- it addresses the cause of default;
 - it is feasible and viable;
 - it has provisions for its effective implementation;
 - it has provisions for approvals required and the timeline for the same;
 - the resolution applicant has the capability to implement the resolution plan.

5.4. The RP has provided details of performance security received as referred to in sub-regulation (4A) of regulation 36B.



5.5. The time frame proposed for obtaining relevant approvals is as under :

“Apart from the deemed approvals mentioned in para 4.2.4, 4.2.5, 4.9.9, 4.9.10 and 4.9.12 there are no other approvals mentioned in the Resolution Plan . The Implementation Schedule is provided under Schedule 1 of the Resolution Plan”;

5.6.No deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (as applicable to the Corporate Debtor) were observed by me.

5.7. The list of Financial creditors of Unimark Remedies Limited being members of the CoC and distribution of voting share among them (as on 1 January 2019) is as under:

Sr. No.	Name of member of CoC	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	ICICI Bank	14.29	Voted for
2.	EXIM Bank	11.11	Voted for
3.	State Bank of India	9.37	Dissented
4.	Central Bank of India	7.92	Voted for
5.	Citi Bank N.A.	7.73	Voted for
6.	Corporation Bank	7.69	Dissented
7.	Bank of India	7.25	Dissented
8.	Bank of Baroda*	6.79	Voted for



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9.	Bank of Maharashtra	5.98	Voted for
10.	Assets Care & Reconstruction Enterprise Limited	4.07	Voted for
11.	Omkaara Assets Reconstruction Private Limited	3.44	Dissented
12.	IDBI Bank	3.30	Voted for
13.	Standard Chartered Bank**	3.25	Voted for
14.	Jammu & Kashmir Bank	2.80	Voted for
15.	Hongkong and Shanghai Banking Corporation (HSBC) – Hongkong	2.48	Voted for
16.	Hongkong and Shanghai Banking Corporation (HSBC)	1.53	Voted for
17.	DBS Bank	1.00	Voted for
	Total	100.00	
		72.25%	Yes
		27.75%	No
		Nil	Abstain

Note:

* Bank of Baroda assigned its debt to Omkaara Assets Reconstruction Private Limited on 04th November 2019 by executing debt assignment agreement.



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*** Standard Chartered Bank assigned its debt to Assets Reconstruction Company (India) Limited on 13th December 2019 by executing debt assignment agreement.*

****In view of the abovementioned assignments, the CoC of the Corporate Debtor presently comprises of 16 members.*

5.8. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

5.9. The amounts provided for the stakeholders under the Resolution Plan are stated in following table. Apart from this the plan contemplates infusion of Rs. 60.00 Crores towards capital expenditure and Rs.50.00 Crores towards working capital requirement.

(Rs. In Lakhs)

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amt Claimed	Amt Admitted	Amt Provided under the Plan	Amt Provided to the Amount Claimed (%)	Amt Provided to the Amt Admitted (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-	-
		(b) Other than (a) above:	-	-	-	-	-
		(i) who did not vote in favour of the resolution Plan	32,858	29,760	3,286	10.00%	11.04%
		(ii) who voted in favour of the resolution plan	78,163	77,505	8,814	11.28%	11.37%
		Total[(a) + (b)]	1,11,021	1,07,265	12,100		
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-	-	-	-	-	-



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IN
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		section (2) of section 21					
		(b) Other than (a) above:	-	-	-	-	-
		(i) who did not vote in favour of the resolution Plan	-	-	-	-	-
		(ii) who voted in favour of the resolution plan	-	-	-	-	-
		Total[(a) + (b)]	-	-	-	-	-
	Total (financial creditors)		1,11,021	1,07,265	12,100		
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-	-
		(b) Other than (a) above:	19,627	10,467	600		
		(i)Government	12,365	3,966	NIL	NIL	NIL
		(ii)Workmen	-	-	-	-	-
		(iii)Employees	1,105	1,105	500	45.25%	45.25%
		(iv) Others	6,157	5396	100	1.62%	1.85%
		Total[(a) + (b)]	19,627	10,467	600		
4	Other debt and dues		-	-	-	-	-
	Grand Total		1,30,648	1,17,732	12,700		

6. We have heard the Counsel(s) and perused the material on record.

6.1. Vide order dated 15.12.2022, the Bench asked RP to submit details of CIRP cost, which is alleged to be exorbitant by one Financial Creditor, and was also asked to clarify whether in case any of the relief or concessions is not granted or partially granted, the RA is still agreed to proceed with the plan. Further, vide order dated 10.01.2023, the RP was asked to clarify with regard to goods in stock claimed to be manufactured from raw material



purchased during CIRP period. Ld. Counsel for RP and RA were also asked to give clarification regarding employee classification, gratuity and provident Fund dues on 02.02.2023.

6.1.1. The RP placed on record detailed working of CIRP cost explaining treatment of goods manufactured during CIRP period and exorbitant CIRP cost.

6.1.2. During the course of hearing, the Counsel of RA submitted that RA shall proceed with the plan even if relief and concessions are either not granted or partly granted in view of limitation on the power of this Bench in this regard.

6.1.3. It was submitted by them on 03.02.2023 that the classification is not discriminatory as most of the ineligible employees are either promoters or KMPs, who are responsible for the position of Corporate Debtor, in which it is. However, the Counsel for RA fairly submitted that RA is not ready to enhance the total plan value for taking into account claims of employees but it has allocated a sum of Rs. 5 crores towards their claims which is enough to cover their claim in accordance with provisions of Section 53 of the Code and Hon'ble SC decision in Jet Airways in relation to gratuity dues.

6.1.4. During the course of hearing this bench also drew attention of the Ld. Counsel for RP and SRA that no amount has been set aside for class of statutory dues whereas operational creditors class, other than employees and workmen, are being paid Rs.1 crore in full and final settlement of their claim. Our



attention was drawn to Clause No 3.4.2 of the Resolution Plan appended with the application which provides that Rs. 1,00,00,000/- has been proposed towards Operational Debt (other than workmen and employees' dues and related party creditors). This is also clear from the title of Clause 3.4, which reads as "*Payment of the liquidation value due to the Operational Creditors including the statutory Dues (other than workmen and employees' dues and related party creditors)*". Further, the Resolution Professional submitted vide Additional Affidavit 21.11.2022 that an amount of Rs. 39,66,95,351/- has been admitted as dues payable to statutory authorities.

6.2. We find that exorbitant increase in CIRP cost is attributable to monthly losses in the manufacturing operations of the Corporate Debtor during the CIRP period due to low capacity utilisation and high employee costs. We clarify that our observation in relation to CIRP cost should not be taken as our approval of CIRP cost claimed by the Resolution Professional in the submissions before us and the CoC shall be competent to determine the quantum of CIRP cost payable under the Plan.

6.2.1. As regards discrimination alleged by employees and unsecured financial creditors, we have dealt with their grievance in the order passed in their respective IA 933/2019 & 2068/2022. We feel that an allocation of Rs. 5 crores satisfy the mandatory gratuity dues payment and minimum amount payment under Section 53(1)(b) of the Code, which mandates equality in treatment to dues owed to workmen for a period of 24 preceding months and dues owed to secured



financial creditors, in view of fact that CIRP cost is to be paid in full on actuals and the excess of such CIRP costs has to be reduced from the amount allocated to the Financial Creditors.

6.2.2. We find that if statutory dues and other operational creditors (other than workmen and employees) are paid out of Rs.1 crore in pro-rata manner, such distribution takes care of interest of the statutory authorities also. We note that all classes of operational creditors are getting more than the amount which each of them could have received under section 53 of the Code in case of liquidation as liquidation value is less than the claim of creditors having priority over them.

6.3. The Resolution Professional shall ensure that dissenting financial creditors are paid at least the amount they would be entitled to u/s 30(2) code.

6.4. We direct the Resolution Professional to update the amount of claim under each class after taking into account the order in IA-416/2023, IA 294/2022, IA 1890/2022, IA 2068/2022, MA 921/2019, IA 471/2022, MA 933/2019, MA 424/2019, IA 115/2022 and our observation in Para 5 and 6 of this order for determination of the amount payable to each claimant in discharge of admitted claims. The Resolution Professional shall file updated copy of Form H after taking approval of CoC upon incorporation of the effect of our observation and directions in the Order, in case it is required.

6.5. We clarify that the Resolution Professional shall ensure that no claim in relation to avoidance transaction, where any of



promoters /KMPs falling under employee category, is pending for adjudication before the Adjudicating Authority before releasing the amount payable to such promoters /KMPs under the plan. The amounts so detained shall be subject to appropriation towards amount found recoverable from such promoter/KMP in accordance with the order passed by the Adjudicating Authority.

6.6. In view of the discussions and the law, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

7. The Application No. MA 23/MB-IV/2019 in CP (IB) No. 197/MB/2018 is allowed. The Resolution Plan submitted by Consortium of ARCIL, Intas Pharmaceuticals Ltd & Shamrock Pharmachemi (P) Ltd annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.
 - i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.



- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to compliance with procedure and approval by the Authorities concerned in accordance with the law applicable to such authority, subject to the provisions of this Code. However, the authorities shall not deny any relief or waiver, which is otherwise permissible in accordance with the law applicable to them read with the provisions of this Code, on account of settlement of dues of such authority at less than their claim amount.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and



shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

- vii. In terms of the judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited***, “on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or



any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

8. In the view of the above judgement the applicant is entitled to waivers/ concessions/ reliefs as expressly provided under the Code and under any other law for the time being in force. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/ or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse /deny/approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.
9. The MA 269/2019 pertaining to adjudication of avoidance transactions u/s 43, 45, 49 & 66 of the Code, pending before the Adjudicating Authority, shall be pursued by Committee of Creditors and the proceeds of recovery in pursuance thereto shall be distributed amongst the Financial Creditor. If any balance is left after satisfaction of their admitted claim the same shall be distributed amongst other creditors in accordance with section 53 of the Code.
10. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

MA 23/MB-IV/2019
IN
CP (IB) No.197/MB/2018

11. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.
12. The MA No. 23/2019 in CP No. 197/2018 is accordingly allowed and disposed of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

17.04.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)